

EXHIBIT M

~~FILED~~

1 IN THE UNITED STATES DISTRICT COURT AUG 26 2003

2 FOR THE NORTHERN DISTRICT OF CALIFORNIA RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
3 BEFORE THE HONORABLE CLAUDIA WILKEN, JUDGE OAKLAND
NORTHERN DISTRICT OF CALIFORNIA

~~ORIGINAL~~ ORIGINAL

6 LUMILEDS LIGHTING,)
7 vs. Plaintiff,)
8 EPISTAR CORPORATION,)
9 Defendant.)
) No. C-02-5077 ✓
) Oakland, California
) July 11, 2003

11 EPISTAR CORPORATION,)
12 Plaintiff,)
13 vs.) No. C-03-1130
14 LUMILEDS LIGHTING,)
15 Defendant.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

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25 [APPEARANCES CONTINUED ON FOLLOWING PAGE.]

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1 JULY 11, 2003

9:00 A.M.

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3 P R O C E E D I N G S

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(Call to order of the Court.)

5

6 THE CLERK: Calling the matter of Lumileds Lighting
7 versus Epistar Corporation, civil action number C-02-5077,
8 and Epistar Corporation versus Lumileds Lighting, civil
9 action number C-03-1130.

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11

Counsel, please come forward and state your

appearances for the record.

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MR. WEISS: Robert Weiss of Jones Day appearing on
behalf of Epistar; and with me is Larry La Porte also of
Jones Day.

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MR. LYONS: And I'm Mike Lyons of Pennie Edmonds,
appearing on behalf of Lumileds Lighting; and I have Andrew
Wu here, also from Lumileds.

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THE COURT: We're going to take up the case
management conference as well --

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You'll all need to step up to the podium, please.

-- we're going to take up the case management
conferences set for next week -- the 27th -- or two weeks
from now -- since we already have your papers and there's no
necessity of making another trip back here.

I'd kind of like to straighten this case up and

1 make it into one case.

2 I guess Lumileds first sued Epistar here for
3 infringement. Yes?

4 MR. LYONS: Well, the initial suit was against a
5 customer of Epistar.

6 THE COURT: Right, but then Epistar joined in?

7 MR. LYONS: They intervened, and then we amended
8 our --

9 THE COURT: And they actually sued --

10 MR. LYONS: That's right.

11 -- and then we amended our complaint to add them.

12 THE COURT: Okay.

13 And then, meanwhile, Epistar sued Lumileds for --

14 MR. WEISS: Prior to --

15 THE COURT: -- declaratory relief about
16 infringement.

17 MR. WEISS: That's right, your Honor.

18 The way it worked was, there was a first complaint
19 that was brought by Lumileds against Citizen.

20 THE COURT: Right.

21 MR. WEISS: The complaint was never served.

22 Then Lumileds -- excuse me -- then Epistar in the
23 Central District brought a declaratory judgment action
24 against Lumileds. And then after Epistar --

25 THE COURT: Declaring that its patents were invalid

1 and not infringed --

2 MR. WEISS: Correct, your Honor.

3 THE COURT: Meanwhile, it's being asserted against
4 you.

5 MR. WEISS: That's right.

6 And then --

7 THE COURT: Or it ultimately got asserted against
8 you?

9 MR. WEISS: -- and then after that, Lumileds
10 amended its complaint to name -- amended its complaint in
11 the Northern District to name Epistar --

12 THE COURT: At your request.

13 And then Epistar L.A. case got transferred up
14 here --

15 MR. WEISS: That's correct.

16 THE COURT: -- all right?

17 So basically we just have one dispute of you suing
18 them for infringement and you defending on invalidity,
19 noninfringement and making various counterclaims.

20 MR. WEISS: That is correct.

21 THE COURT: We don't really have two lawsuits here.

22 MR. LYONS: That's correct.

23 MR. WEISS: That's correct.

24 THE COURT: So let's make it into one lawsuit.

25 Let's start with your lawsuit, your original first

1 lawsuit. Does that say everything about them that you want
2 to say about them, or would you need to amend your complaint
3 to bring in anything else that turned up only in the second
4 lawsuit?

5 MR. LYONS: No. That has -- all of our allegations
6 against them are in the case we originally filed here.

7 THE COURT: Good.

8 Then what I'm going to end up doing with both of
9 the motions today is telling you some things about them but
10 ultimately giving you the chance to try again to bring
11 whatever legitimate claims you may have against Lumileds.

12 So what I'll do, then, is have you do a new answer
13 which answers the original complaint and it asserts all
14 counterclaims that you want to, against them.

15 And once you've done that, then I'm going to
16 dismiss this second lawsuit, and we're going to proceed only
17 with the first lawsuit, and have things a little tidier.

18 MR. WEISS: Okay.

19 THE COURT: If that's all right with you.

20 MR. WEISS: That's fine, your Honor.

21 THE COURT: Okay.

22 MR. WEISS: The only thing is from a procedural
23 standpoint, we assert that because we were the original
24 plaintiff in the declaratory judgment action, that we should
25 be entitled to go first in any proceedings.

THE COURT: Yes. Well, I don't buy that.

2 MR. WEISS: All right.

3 THE COURT: So we're going to stick with Lumileds
4 as the patentholder being the sort of traditional first
5 person likely to sue or whatever.

6 Okay. So with respect to the counterclaims that
7 you want to make, my general feeling is that the
8 contract — or relationship, I guess I should say -- between
9 Epistar and Citizen is not an enforceable contract that
10 required Citizen to do things, and that thus could be
11 interfered with by Lumileds.

12 I think it is, as Lumileds interprets it, some
13 things that Citizen had to do in order -- if it wished to
14 assert its right to get indemnified by you, but not a
15 contract that it was required to do, regardless.

16 And thus, I don't think that the claims that depend
17 on interference with contract, or some sort of bad,
18 erroneous action with regard to suing or settling the
19 lawsuit against Citizen is going to be the basis for any
20 actionable counterclaims.

21 Unless, as I say, I will give you leave to make one
22 more attempt at reasserting all these things in the light of
23 what I'm going to say.

24 But you ought to think about that one pretty hard.
25 and amend it only if there's some way to get around what

1 I've said.

2 MR. WEISS: Your Honor, may I respond?

3 THE COURT: No, let me just tell you the whole
4 thing first.

5 MR. WEISS: Okay.

6 THE COURT: So that would apply not only to the
7 contract claim, but also to the extent that's the basis for
8 your misfeasance patent claim, I don't think it's a
9 legitimate basis.

10 As long as it's a good faith lawsuit -- in other
11 words, not a lawsuit that's frivolous or based on a patent
12 known to be invalid, for example, or based on clear lack of
13 infringement.

14 As long as it's at least an arguably valid lawsuit
15 against you and/or your customers, I don't see that as
16 patent misuse. Nor do I see settling such a -- at least the
17 color of the lawsuit -- to be unclean hands or patent
18 misuse.

19 With regard to the litigation privilege -- well --
20 let's put that at the end.

21 The abuse of process I don't think applies to
22 filing a lawsuit under California law, and the settling of
23 the lawsuit is not process either. So I don't see an abuse
24 of process claim here, at least not one based on filing or
25 the settling a lawsuit.

1 The unfair competition claims seem to depend on the
2 underlying claims, so to the extent there's nothing more to
3 them, then their fate would follow, the fate of the claims
4 upon which they relied.

5 The litigation privilege argument, then, really is
6 somewhat moot, although I tend to think that litigation
7 privilege would not apply to the settlement of the lawsuit,
8 although it might apply to the bringing of the lawsuit.

9 So the patent misuse claim, to the extent it's
10 based on an at least colorable lawsuit, I don't think it
11 lies. But again, I'll let you amend, and then, for example,
12 if you were to allege an actual bad faith objectively
13 unreasonable lawsuit against yourself or customers -- and
14 I'm not encouraging to do that -- because as the Federal
15 Circuit says, that's certainly a plague on the patent system
16 when they're made without a good basis to do so, but if you
17 really think you had a good basis to do so, that would be
18 one I could imagine; and I don't know if you have any other
19 bases for an unclean hands claim, apart from a claim of
20 interference.

21 So those are my thoughts. You may address them if
22 you like.

MR. WEISS: Thank you, your Honor.

23
24 First of all, with regard to your statement that
25 there does not appear to be an enforceable contract, it

1 seems to me that's a fact issue here. And in view of the
2 contemporaneous documents that were written by Citizen, it's
3 clear that there was a contract.

4 THE COURT: Well, I don't think so.

5 It's clear that Citizen believed it had a right to
6 get indemnified by you if it complied with certain
7 conditions.

8 But Citizen doesn't say, for example, "We
9 understand that we are obliged by the contract to allow you
10 to settle our case for us even if we don't want you to, and
11 even if we don't take advantage of our right to be
12 indemnified by you. But none of the letters indicate that
13 that's Citizen's understanding.

14 MR. WEISS: Well, your Honor, I would differ with
15 that.

16 THE COURT: Okay. Fine.

17 MR. WEISS: -- Citizen does say, "You go ahead and
18 take care of the settlement of this lawsuit pursuant to
19 the contracts that we entered into. That was what they told
20 us.

21 THE COURT: That's a paraphrase that I don't think
22 is quite accurate.

23 MR. WEISS: Well, I can --

24 THE COURT: Why don't you read me your best shot.

25 MR. WEISS: This is a document that's attached to

1 the declaration of Lawrence La Porte in support of Epistar's
2 opposition to the motion for judgment on the pleadings.

3 And in one of the letters -- there's actually two
4 letters -- one is dated August 30th, 2002. Another one is
5 dated July 2nd 2002.

6 And in the second paragraph, Citizen in its letter
7 to the president of Epistar says, "Epistar Corporation and
8 Citizen Electronics have agreed that in case of patent
9 disputes with a third party, Epistar should be responsible
10 to deal and settle with them on the basis of the purchase
11 agreement, dated July 10th, 2000, the intellectual property
12 warranty, dated May 30th, 2002, and the mutual consent
13 between us, on June 14th.

14 And then it goes on in the next paragraph, "We
15 would like to confirm you will undertake to deal with
16 Lumileds to settle this problem."

17 So it's our position, your Honor, there was a
18 contract, the contemporaneous documents indicate there was a
19 contract, and that Citizen passed on to Epistar the control
20 of the settlement.

21 These are -- at best it's a factual issue which
22 should not be decided at this stage of the pleadings -- of
23 the proceedings.

24 THE COURT: Okay. Anything else on any of the
25 other points?

1 MR. WEISS: Yes, your Honor.

2 I agree with you that the mere filing of a lawsuit
3 is not an abuse of process, nor is the mere settlement of a
4 lawsuit, an abuse of process. But that's not what happened
5 in this case.

6 First, there were multiple lawsuits, your Honor.

7 This was not a single lawsuit --

8 THE COURT: One is not -- I'm not sure more than
9 one is enough either because -- but go ahead.

10 MR. WEISS: Well, I think it is, your Honor.

11 THE COURT: I mean, there's a tort of malicious
12 prosecution.

13 MR. WEISS: The problem with the tort of malicious
14 prosecution, as you must remember here, your Honor, that the
15 prosecution is against a third party.

16 So Epistar, who was not prosecuted -- and malicious
17 prosecution requires a favorable termination -- favorable to
18 the party that was prosecuted -- Epistar would never have
19 any standing under a malicious prosecution action to go
20 after what we contend is an abuse of process.

21 In addition to the mere filing of the lawsuit, what
22 this was, these were lawsuits designed to coerce the
23 competitors to enter into an onerous license agreement with
24 Lumileds or face the loss of their customers.

25 And it's not a mere settlement, your Honor.

1 If it had been a settlement that was consistent
2 with the objectives of the litigation, that would have been
3 one thing. But it was not.

4 It's a settlement that goes beyond the scope of the
5 patent. In other words, what the settlement agreements and
6 the consent judgment that were entered into with Citizen and
7 RGA do, is they prevent any purchase of the AlGaN LED's
8 from Lumileds' competitors.

9 They're not restricted to the patent, because in
10 the agreements, Lumileds gets to be the judge and jury with
11 regard to what products can be purchased and what products
12 cannot be purchased.

13 THE COURT: Yes. I have to say I don't really --
14 I'm not persuaded by that argument either. And I'll
15 anticipate your outside-of-the-life of a patent argument.

16 You characterize it the way you do, but the way I
17 see it is simply the legitimate monopoly of a patentholder
18 to -- that's what a patent is -- is a lawful monopoly for 17
19 years -- and the patentholder is allowed to protect its
20 sanctioned monopoly.

21 And if it sues you, that's what it's entitled to
22 do. If it sues your customers because they're using
23 infringing items, that's what it's entitled to do. If in so
24 doing, it prevents your customers from buying infringing
25 things from you, then that's what it's entitled to do.

1 Yes, it has to do it in good faith. Yes, it can't
2 do it in an objectively unreasonable fashion, but that --
3 but unless that is what it is, then it's what it's entitled
4 to do.

5 And I also don't think that it goes beyond the life
6 of the patent, because, again, it has to be in good faith;
7 and noone would say that a lawsuit on a patent that's
8 expired is in good faith.

9 MR. WEISS: But, Your Honor, perhaps I am not
10 making myself clear.

11 THE COURT: You know, the monopoly can be misused,
12 with tying, with pooling, things like that. But simply in
13 good faith asserting one's patent against the manufacturer
14 or customers is just what it's all about.

15 MR. WEISS: But that's not the point I am trying to
16 make, your Honor.

17 But the point is here. In effect they say, not to
18 the customers, "You can no longer buy infringing product."
19 What they say is, "You can't deal with our competitors."

20 THE COURT: Oh, they say you can't buy infringing
21 product from them -- what they're saying --

22 MR. WEISS: No -- no.

23 THE COURT: -- you can't buy ceiling fans.

24 MR. WEISS: No -- no, because, your Honor, they
25 decide what infringes and --

1 THE COURT: Well, they make a decision --

2 MR. WEISS: -- and there's no limitation.

3 THE COURT: -- not to be in good faith.

4 MR. WEISS: But --

5 THE COURT: And one can never say you can only --
6 you can't buy them unless a Federal District court affirmed
7 by the Federal Circuit has ruled that they're infringing.
8 Someone has to decide what is close enough to infringing
9 that they can't do it.

10 MR. WEISS: Someone has to decide, that's correct.

11 Someone like a Court, not someone like Lumileds, to simply,
12 arbitrarily make that decision. And that's the problem
13 here, because this is the type of agreement that stifles
14 competition because it allows Lumileds to be the judge of
15 what products they can buy and what they can't buy, and
16 there's no limitations on them.

17 Even if you add a good faith limitation, that's
18 entirely subjective.

19 And so, your Honor, that's the argument with regard
20 to the settlement. It's not merely entering into a
21 settlement agreement or entering into a settlement agreement
22 that's commensurate with the scope of the patent. It is
23 designed to sever the relationship between Epistar and the
24 other competitors, with its customers, by encompassing all
25 AlGaN LED's.

1 THE COURT: Okay.

2 Did you want to respond?

3 MR. LYONS: Just very briefly, your Honor.

4 First of all, I agree with the points the Court has
5 made.

6 I did want to comment. Counsel referred --
7 extensively read from some letters that were sent from
8 Citizen to Epistar. I just wanted to point out that those
9 letters were months before an actual lawsuit was filed. So
10 there were some negotiations, but there was absolutely no
11 pending lawsuit.

12 There was no discussion about who would defend the
13 lawsuit, because there was no lawsuit yet to defend.

14 Also, Counsel doesn't refer to other, later
15 correspondence. This was the correspondence that was
16 subject to our motion for leave to file a supplemental brief
17 in which Epistar very clearly took the position where they
18 agreed with the interpretation the Court has suggested; an
19 interpretation that Lumileds had for the agreement, that
20 they never felt that they had surrendered their right to
21 defend themselves. They just had an indemnity agreement.
22 Wasn't a complicated agreement.

23 And in fact, the correspondence refers to the
24 purchase agreement which is nothing more than that Epistar
25 will cooperate with Citizen, the exact opposite of what

1 they're trying to do.

2 They're trying to take over the case and dictate to
3 them the terms on which they would settle the case.

4 I'll just very briefly comment on the arguments
5 made in connection with the -- what they've described as the
6 overly broad settlement agreements. As the Court points out
7 by its own terms, it's limited to infringement.

8 Now, they say, "Well, but who determines
9 infringement?"

10 It's not a Court. Unless a Court decides
11 infringement, it's misuse. Well, they're defining settling
12 a lawsuit as patent misuse. That's basically what they're
13 saying.

14 Every time you have a settlement, the parties have
15 to negotiate, "Well, what does the patent cover? Does it
16 covertly try to tie it to the patent?"

17 And if they go beyond that, that can be patent
18 misuse. But you don't have the benefit of judicial
19 determination in a settlement, so there's no way you can do
20 that.

21 The contracts that Lumileds entered into
22 specifically require them to exercise good faith. There's
23 no more you can ask of a party in settling a case.

24 Lumileds does nothing more than pursue the monopoly
25 that's been given them by the grant of the patent. They're

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1 allowed to sue infringements.

2 Whether those infringements are customers or not,
3 they have a right to stop people from infringing their
4 patents, and that's all that's happened.

5 THE COURT: Did you want to reply briefly?

6 MR. WEISS: Well, first of all, your Honor, I think
7 this reference to multiple documents in order to try to
8 interpret this contract simply points out that this is a
9 factual issue which cannot be resolved at this stage of the
10 proceedings.

11 THE COURT: Well, I'm not really considering those
12 responsive documents.

13 I'm considering the face of the contract which
14 you've attached to your -- I shouldn't call it a contract --
15 the face of the thing that you point to as the contract
16 which you attached to your complaint, and thus I can
17 legitimately construe that on the course of the motion for
18 judgment on the pleadings.

19 You then want to supplement that with some
20 correspondence, which I did consider, and I don't that that
21 correspondence renders the ambiguity in the documents that
22 you attached, leading me to believe that they might be a
23 contract. And I won't go beyond that additional document
24 now.

25 MR. WEISS: It's my understanding, however, your

1 Honor, that are you giving us leave to amend.

2 THE COURT: I'm giving you leave to file a brand
3 new answer which is going to be your total answer and
4 counterclaims to what is now going to be their only
5 complaint or their only pleading against you.

6 So you can exercise your discretion in light of
7 what I've just said to make the counterclaims that you think
8 you can legitimately make, if any, as a result of my
9 comments and my ruling on the ones that you've made so far.

10 In other words, I'm granting the motion for
11 judgment on the pleadings with respect to your existing
12 counterclaims; and I'm granting it with leave to amend.

13 MR. WEISS: Okay.

14 THE COURT: And I'm granting the motion to amend to
15 add the patent misuse and unclean hands; however, cautioning
16 you that you may not add them if they're based only on the
17 things that we've discussed here this morning that I have
18 found not to be legitimate grounds for such.

19 So given that, you may look at it and find that
20 there is no counterclaim that you can bring anymore, in
21 which case you shouldn't try to bring one.

22 But if you can plead around what I said and you've
23 got something else, you may include that.

24 MR. WEISS: All right.

25 Your Honor, I think the primary basis of course for

1 the motion for judgment on the pleadings was the litigation
2 privilege.

3 And of course, our position is that this does not
4 involve communications which is what is protected by the
5 litigation privilege, and the cases that they cited involve
6 communications. This involves conduct.

7 THE COURT: Right.

8 And I'm not ruling in their favor based on the
9 litigation privilege with respect to the settlement.

10 I do think the litigation privilege applies to
11 their filing of the complaints. It doesn't protect them
12 with respect to the settlement, but there are other
13 arguments which do protect them with respect to the
14 settlements, and those are the fact that there is no
15 contract that was violated, that the settlements are not
16 abuse of process, et cetera, all the other things that we've
17 been discussing.

18 So, yes, I do believe you're right on one of your
19 litigation privilege arguments, but it doesn't solve the
20 problem.

21 With respect to the case management -- and I'm
22 sorry to spring this on you -- but I hope -- I don't think
23 it's too complicated -- so I think we can just go ahead and
24 do this -- and save you another trip.

25 You had a dispute about discovery, and I will go

1 with Epistar's position which is your depositions will be as
2 limited in the Federal rules; and if anyone wants more than
3 that, they can either get an agreement or move for it.

4 The one exception is that I do think that Lumileds'
5 position with respect to depositions that need interpreters
6 is well taken, and you should add 50 percent to any time on
7 a deposition that has to be taken by way of an interpreter.

8 With respect to who gets to go first at the claim
9 construction, I'm going to go with Lumileds on that.
10 Although, you'll find that I do the claim construction
11 hearings in a somewhat more informal fashion.

12 If I decide I have more questions for one side than
13 the other, I may start with those questions.

14 With respect to a claim construction prehearing
15 conference, I don't do those, so we won't have one.

16 With respect to the briefing schedule on the claims
17 construction, I'll follow your agreed to schedule, and you
18 get up to the -- you're agreed on everything up to the point
19 of filing the brief, and with respect to the briefing
20 schedule, I will go with Lumileds' schedule because I prefer
21 to have *seriatim* briefs, rather than simultaneous briefs.

22 And the date you've given for claims construction
23 hearing is okay, all the other dates are okay, except when
24 you get down to your deadline for dispositive motions
25 followed by your pretrial and trial, you've got your filing

1 of dispositive motions on the 14th. That's a Saturday. We
2 have to do it on the 13th.

3 And we would have six weeks from the 13th for the
4 hearing, because again, I would want cross motions, as
5 opposed to simultaneous motions. So that means a six week
6 schedule to involve a surreply.

7 That would give you a hearing date on the 24th of
8 September. And then as you know, with a November trial
9 date, you'd be starting to submit your witness lists on the
10 first of October.

11 I might not rule from the bench, and then you'd
12 find yourself having to submit witness lists without knowing
13 which claims were even in the lawsuit, which I don't think
14 you'd been happy with once you got them.

15 So you're going to need to either make your case
16 dispositive motion date earlier or your trial date later --
17 and you're probably going to have to make your trial date at
18 least somewhat later -- because I'm pretty booked in
19 November of '04. Actually, I have some dates in October,
20 oddly enough. But November -- well, I guess late November I
21 could do it. I'll compromise between you and call it an
22 eight day trial.

23 I could actually give you the 15th of November.
24 But even that would be pushing it, I think, with respect to
25 a late September dispositive motion cutoff.

1 So do you want to go later on your trial date, or
2 do you want to go earlier on your dispositive motion date?

3 MR. WEISS: I would think we would want to go
4 earlier on our dispositive motion.

5 MR. LYONS: Yes, I would concur in that.

6 THE COURT: Okay. Do you want to make that --
7 well, why don't you just talk it a bit over amongst
8 yourselves and come up with a different schedule.

9 I could give you a trial date of November 15th.
10 You're not going to be happy with that either because the
11 second week is going to be Thanksgiving week, so you eight
12 days would run you into the Monday after Thanksgiving.

13 But if you want that date, you can have it. No one
14 else wants it.

15 Or you could go into December, early December,
16 which isn't popular either.

17 MR. WEISS: Not for a jury trial, your Honor.

18 THE COURT: Pardon?

19 MR. WEISS: Not for a jury trial.

20 THE COURT: Right.

21 Or you can look at January of '04

22 MR. WEISS: January of '05?

23 THE COURT: I really hate to go that far.

24 Why don't you go ahead and take November. It won't
25 be so bad. Maybe you'll settle anyway. November 15th, and

1 then a pretrial conference, November 5th, at 1:30.

2 And then we'll -- let's see -- I think you should
3 have your case dispositive motion hearing, I'd say, in
4 August at the latest -- August 20th, and move back your
5 filing date six weeks before that.

6 I'd like to have the plaintiff file six weeks
7 before that. Move on anything you want to move on, like
8 none -- like infringement, validity.

9 And then you can file an opposition and cross
10 motion; and if there's something that they don't raise that
11 you want to raise, you can raise it. Like, if they don't
12 move on validity, and you want to move on invalidity, put it
13 in at that point. Then we'd have a reply and a surreply.

14 Now, pronounce that thing again. The LED is an --

15 MR. WEISS: "AlGaN." "

16 MR. LYONS: "AlGaN." "

17 THE COURT: Now, that isn't really how it's
18 spelled. And I had another case about AlGaNs.

19 Have you looked this up?

20 MR. LYONS: Sometimes --

21 THE COURT: It might have been HP versus UEC, that
22 it had some of these AlGaNs in it, although maybe it was a
23 slightly a different LED.

24 MR. WEISS: It's the same thing. It's sort of an
25 abbreviation.

1 When it's printed out, they put the metals in a
2 different order, so it doesn't come out to be "AlGalnN." But
3 people -- it's easier to refer to it as "AlGalnN."

4 THE COURT: Oh, so it's the same LED that I had
5 before.

6 MR. LYONS: It's the same patent. It's the same
7 LED, the same technology. You've already construed the
8 patent once before, addressed summary judgment.

9 THE COURT: I thought it sounded familiar. And
10 what case was this?

11 MR. LYONS: This should be familiar. The UEC case
12 was before you.

13 THE COURT: And what case was that, UEC versus
14 Circuit Board or --

15 MR. LYONS: Originally, this was Hewlett-Packard
16 was the company that developed this technology, but the
17 technology, now that group at Hewlett-Packard is now part of
18 an another company called Lumileds Lighting. But it's the
19 same people --

20 THE COURT: So it was HP versus UEC, was that the
21 case?

22 MR. LYONS: Well, it actually was -- actually HP,
23 Agilent and Lumileds all were all parties to the case --

24 THE COURT: And what happened?

25 MR. LYONS: We did a claim construction, we did

1 summary judgment. You issued summary judgment decisions,
2 and shortly thereafter we settled, and UEC is now -- has a
3 license to disseminate patent.

4 MR. WEISS: One significant difference is that the
5 accused devices in that case were considerably different
6 than the accused devices in this case, and the
7 interpretation of the claims as a result focused on things
8 that related to those accused devices, as opposed to some of
9 the issues that we'll be addressing.

10 THE COURT: Okay. But at least it will sound
11 familiar.

12 MR. WEISS: Yes, it should.

13 MR. LYONS: Your Honor, you can imagine we actually
14 think a lot of your constructions are very relevant.

15 THE COURT: Sure.

16 MR. LYONS: So you'll hear more about that.

17 THE COURT: You've got the complaint, so we'll need
18 a time for you to file your answer. I guess maybe -- I
19 guess I should put out an order first, and let you take a
20 look at that, and then file your answer say 20 days from the
21 date the order comes out.

22 MR. WEISS: Okay.

23 THE COURT: And then you'll -- I suppose if there
24 are counterclaims, you'll want to either answer them or move
25 to dismiss them, again.

1 Meanwhile, your other dates will --

2 MR. LYONS: I assume we'll be able to proceed with
3 the patent case.

4 THE COURT: Yes.

5 Okay.

6 MR. LYONS: Thank you, your Honor.

7 MR. WEISS: Thank you, your Honor.

8 THE CLERK: What about ADR?

9 THE COURT: Oh, yes. I'm sorry.

10 You need to have a settlement procedure. What
11 would you like to do to try and settle the case and when
12 would you like to do it?

13 MR. LYONS: Your Honor, I think from the
14 perspective of Lumileds, they certainly want to pursue
15 settlement, but I think it would be -- it would make most
16 sense to pursue that after more has happened in the
17 litigation.

18 The parties actually have discussed at great length
19 settlement over the course of the years. So they feel the
20 case needs to mature before they would do it or they think
21 it would be more beneficial. I think that would be --

22 MR. WEISS: Your Honor, that's not our position.
23 We think that there really have not been settlement
24 discussions.

25 What there were, were cross license discussions and

1 then they, there was an accusation of infringement, and then
2 following that was the lawsuit that was filed against
3 Citizen.

4 So --

5 THE COURT: Yeah, I think you should go ahead and
6 proceed to some sort of settlement process. If it doesn't
7 work, you can always go back again after claims
8 construction -- but particularly since there is at least
9 some claims construction done already, you're not going to
10 know much more about this case until after case dispositive
11 motions which is way too late.

12 So do you want to go to a private mediator?

13 MR. WEISS: No, your Honor.

14 I think we elected a -- either a district court
15 judge or --

16 THE COURT: Well, have you gotten one that is
17 willing to do it for you?

18 District judges generally don't do that, and the
19 magistrate judges generally don't do them in the first
20 instance.

21 I could offer you a Court sponsored mediation which
22 would be a volunteer mediator, volunteer, or early neutral
23 evaluator, arbitration.

24 Or, if you wanted to, you could jointly pay a
25 private mediator and frankly, I won't order you to do that,

1 but I will recommend that you do that because you will get
2 someone you want, and schedule when you want, at the time,
3 and have all the time you want.

4 MR. LYONS: Your Honor, Lumileds is comfortable
5 with the private mediator. In fact, that was the format we
6 used in the prior UEC case, and ultimately, it was during
7 the second such mediation that we were able to get the
8 settlement.

9 So, I think --

10 THE COURT: Oh, who did it?

11 MR. LYONS: First, we did Judge Renfrew -- but
12 actually, it was Judge Lynch was the mediator at JAMS when
13 we settled the case, and we'd be happy to use Judge Lynch
14 again here; he was very useful.

15 THE COURT: Well, that might be a good idea.

16 MR. WEISS: Your Honor, why don't we discuss it
17 with the other side.

18 I thought we had reached an agreement on the
19 settlement process in the case management report, but I
20 don't have that in front of me.

21 So --

22 THE COURT: I don't think it mentioned it.

23 MR. WEISS: Okay.

24 THE COURT: That you were willing to discuss
25 settlement, and it didn't say in what context. And as I

1 say, I can't — the district judges generally don't do the
2 settlements.

3 MR. WEISS: It may be we agreed to this in the
4 Central District case before it got transferred.

5 THE COURT: Oh, Okay.

6 Well, let's do this. I'll refer you to early
7 neutral evaluation, unless you can agree on a private
8 mediator and agree to splitting the costs of a private
9 mediator. And I'd like you to do it in, let's say, in the
10 next 120 days.

11 MR. WEISS: Okay.

12 THE COURT: So if you would let us know whether
13 you're going to need to use our court's early neutral
14 evaluator, or if you, in fact, can agree on a private
15 mediator.

16 Why don't you let us know that within the next 30
17 days so we don't bother trying to schedule this.

18 MR. WEISS: Okay.

19 THE COURT: And I would think Judge Lynch would be
20 a good choice if he's already got some familiarity with the
21 subject matter of the case. And he is a former district
22 judge, as you requested.

23 But if you want to agree on someone else, that's
24 fine, too.

25 Okay.

1 MR. WEISS: Thank you, your Honor.

2 MR. LYONS: Thank you, your Honor.

3 (End of Proceedings.)

4

5 I certify that the foregoing is a correct
transcript from the record of proceedings in the
6 above-entitled matter.

7 *Charles L. Blake* August 20, 2003
C. L. BLAKE, CSR 3965

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